

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MIGUIL ANDREW JACKSON,

Defendant-Appellant.

UNPUBLISHED
February 13, 2007

No. 266554
Oakland Circuit Court
LC No. 2005-201440-FC

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, and sentenced to a prison term of 5 to 15 years. He appeals as of right. This appeal is being decided without oral argument under MCR 7.214(E). Because there is no indication of prosecutorial misconduct in the record, we affirm.

I. Underlying Facts

Defendant was convicted of robbing the Oakland Party Store with Deandre Benson and Rashawn Lanier on the evening of January 12, 2005. Benson testified that, on the day of the robbery, defendant picked up him and Lanier, who had a gun, in a stolen Durango. Lanier suggested robbing the party store, and defendant and Benson both allegedly said, “it’s whatever, meaning we can do it.” Benson testified that he and Lanier went into the party store to look around, but Lanier pulled out his gun. Walter Reynolds testified that he owns a business nearby and was inside the store talking to the owner, Maurice Gorges, when two young men walked into the store. Both Gorges and Reynolds testified that the gunman, later identified as Lanier, directed them to the floor at gunpoint.

Benson testified that he went behind the counter, directed Gorges to open the cash register, and took money. Benson testified that defendant, who was wearing a white “do-rag” on his face, came to the door and told them to hurry up before the police arrived. Reynolds also testified that shortly after the first two men came into the store, a third robber wearing something white over his face came to the door and said, “let’s go.” Gorges testified that a third man wearing a white mask over his face was inside the store, that all three robbers came behind the store counter, and that all three took money. However, Benson testified that defendant did not go behind the counter or take money, but did demand phone cards.

Gorges and Reynolds testified that Lanier demanded the whereabouts of the safe and the videotape. Gorges told him that he did not have either, and encouraged him to take whatever he wanted. Reynolds and Gorges testified that two men left the store together, leaving Lanier behind. According to Gorges, one of the robbers urged Lanier to hurry up as they left the store. Gorges and Reynolds both testified that Lanier started to leave, but returned and again demanded the safe and tape at gunpoint. Gorges, who had retrieved a gun from behind the counter, shot Lanier in the head. Lanier subsequently died. Benson testified that he and defendant had left the store together, and he was unaware that Lanier had been shot.

Meanwhile, the police had been contacted by outside witnesses. Julie Steward testified that she walked into the store during the robbery and saw three young men. One man was behind the counter, one was in the first isle, and one was near the back of the store. One of the men suggested that she leave. Beverly Frost testified that when she drove by the store, she saw three young men. One man was behind the counter, another in front of the counter, and a third man wearing red was outside the store. Craig Frost, who was in the car with Beverly, saw two men behind the counter, and one of the men was pointing a gun at Gorges. Lawrence Brown testified that he was outside the store when he saw a man wearing white and a man wearing red run from behind a dumpster near a Dodge Durango. When the police arrived, Brown directed them in the direction of where the two men ran.

Southfield police officers observed a Dodge Durango with its engine running backed into a parking spot in the parking lot of the store. An officer testified that as the police were searching the area, he saw two men flee when they saw him. The police thereafter apprehended Benson, and subsequently found defendant hiding in a shed. Defendant was wearing a red jacket and a white do-rag. The police recovered \$319 from Benson and \$1,077 from Lanier's clothing; they also recovered \$680 and a check payable to the Oakland Party Store strewn in nearby yards.

II. Prosecutorial Misconduct

Defendant's sole claim on appeal is that he was denied a fair trial because the prosecutor knowingly presented the false testimony of Benson to secure a conviction. Because defendant failed to object to the prosecutor's conduct, we review this claim for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999). "No error requiring reversal will be found if the prejudicial effect of the prosecutor's conduct could have been cured by a timely instruction." *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000), abrogated in part on other grounds in *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004).

The prosecution has a constitutional duty to report the false testimony of its witnesses and may not knowingly use false testimony to obtain a conviction. *People v Lester*, 232 Mich App 262, 276-277; 591 NW2d 267 (1998). The prosecution must also correct false evidence. *Id.* Absent proof that the prosecution knew that the trial testimony was false, however, reversal is unwarranted. *People v Herndon*, 246 Mich App 371, 417-418; 633 NW2d 376 (2001). A new trial is required only if there is a reasonable likelihood that the false testimony could have affected the verdict. *Id.*

Defendant has failed to demonstrate plain error. First, defendant has failed to show that Benson's trial testimony was actually false. Although Benson made inconsistent statements

previously, the jury was aware of those inconsistencies. The prosecutor told the jury in opening statement that Benson's testimony had been contradictory at different stages of the case. The prosecutor stated that although Benson had been consistent in stating that defendant was with him and had driven the vehicle, he had "told different things about different people's roles over time[.]" Therefore, she would not be asking Benson a lot of questions, but was calling him for identification purposes, e.g., to connect the circumstantial evidence. The prosecutor also told the jury that Benson was "looking for leniency from the sentencing judge."

At trial, Benson admitted that he had lied previously. Benson testified that it was Lanier's idea to rob the party store, but admitted that in a post-arrest statement, he stated that it was defendant's idea to rob the party store. Benson testified that he lied when he wrote that statement. Benson admitted that at the preliminary examination, he lied about the location where defendant originally picked him up. Benson acknowledged that his testimony had changed from the night of the robbery and the preliminary examination in some regards. Benson also acknowledged that the only consistent facts throughout the case were that defendant picked him up in a stolen car, they drove to the store, he and defendant fled the store together, and that he and defendant were apprehended. Benson testified that he was telling the truth at trial.

Benson also testified regarding the scope of a sentencing agreement under which he testified. Benson testified that he pleaded guilty to armed robbery five months before defendant's trial, and would be sentenced on the same day that he testified in defendant's case. He explained that his attorney advised him that there was a possibility that his sentence would be reduced to the bottom range of the sentencing guidelines if he testified. He further explained that he was guaranteed that if the court imposed a sentence of more than 51 months, he could withdraw his plea and proceed to trial. He indicated that no other specific promises were made to him in exchange for his testimony.

In sum, there is no evidence, beyond speculation, that the prosecutor presented false testimony. Rather, under the circumstances presented here, defendant's challenge of Benson's testimony involves nothing more than a matter of witness credibility, which was for the jury to decide. See *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). As noted, the problems with Benson's credibility were plainly presented to the jury. The record discloses that defense counsel vigorously attacked Benson's credibility, and thoroughly explored his motivation to lie. Additionally, the trial court's instructions protected defendant's rights. The court instructed the jurors that it was their job to assess witness credibility, and in doing so, they should consider if the witness has any bias, prejudice, or personal interest in the case, and if the witness had any special reason to be untruthful.

Because there is no tangible indication that the prosecutor engaged in any misconduct, defendant has failed to demonstrate plain error. Consequently, reversal is not warranted on this basis.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio

